February 20, 1997

D.P.U/D.T.E. 96-24-C

Petition of Eastern Edison Company, pursuant to G.L. c. 164, §§ 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

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ORDER ON EASTERN EDISON COMPANY'S COMPLIANCE FILING

I. INTRODUCTION

On February 16, 1996, Eastern Edison Company ("EECo" or "Company") filed with the Department of Public Utilities, now known as the Department of Telecommunications and Energy ("Department"), its restructuring proposal. Docketed as D.P.U./D.T.E 96-24, that proposal includes, among other things, a plan for moving from the current regulated industry structure to a competitive generation market and to increased customer choice, On May 16, 1997, EECo and Montaup Electric Company ("Montaup") submitted an Offer of Settlement ("Settlement") of the Company's restructuring proposal, along with a Joint Motion for Approval.[1]

On December 23, 1997, the Department issued an Order on the Company's Settlement and found that it is consistent or in substantial compliance with Chapter 164 of the Acts of 1997[2] ("St. 1997, c. 164" or "Act") and that it represents, on balance, a just and reasonable resolution of restructuring issues for the Company and its ratepayers, and thus is in the public interest. Eastern Edison Company, D.P.U./D.T.E. 96-24, at 112 (1997) ("Order"). On December 31, 1997, the Company submitted a filing in partial compliance with the Order, and on January 8, 1998, the Department approved rates and tariffs submitted by the Company in compliance with the Department's Order.[3]

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[1] The Settlement was signed by the Company, American National Power, the Attorney General, Competitive Power Coalition, Conservation Law Foundation, Intercontinental Energy Corporation, Massachusetts Division of Energy Resources, Northeast Energy and Commerce Association, Northeast Energy Efficiency Council, Retailers Association of Massachusetts, The Energy Consortium, and U.S. Generating Company.

[2] On November 25, 1997, Chapter 164 of the Acts of 1997, entitled "An Act Relative to Restructuring the Electric Utility Industry in the Commonwealth, Regulating the Provision of Electricity and Other Services, and Promoting Enhanced Consumer Protection Therein," was signed by the Governor.

[3] On January 2, 1998, the Company submitted a motion for reconsideration of the portion of the Department's December 23 Order that required the Company to revise the transition cost charge formulas when the residual value credit is applied and when other conditions might occur and a motion for an extension of the judicial appeal period of the December 23 Order. On January 9, 1998, the Department granted the Company's motion for reconsideration and denied their motion for extension of the G.L. c. 25, § 5 appeal period as procedurally redundant and as rendered moot by issuance of the Order on the motion for reconsideration.

(continued…)

On January 15, 1997, the Department reopened D.P.U./D.T.E. 96-100 to solicit comments on proposed regulations, designated as 220 C.M.R. § 11.00 et seq. On January 28, 1998, the Department issued its order on the Boston Edison Company restructuring plan, D.P.U./D.T.E 96-23. In that decision, the Department modified its standard of review for restructuring plans to better conform it to the terms of the Act. Specifically, the Department noted that for those sections of a restructuring plan governed by G.L. c. 164, the Department must determine whether the plan "substantially" complies or is consistent with the Act. For all other features of the plan, the Department must determine unqualified compliance of those features with applicable provisions of the Act.

On February 9, 1998, the Company submitted a further compliance filing ("Filing") that purports to conform Eastern's retail delivery rate tariffs, proposed to be effective on March 1, 1998, to the requirements of the Act and D.P.U./D.T.E. 96-23.

[3](…continued)
Motions for reconsideration have also been filed by Enron, the Conservation Law Foundation, the Low Income Intervenors, and the Massachusetts Technology Park Corporation. Among the issues on reconsideration is the appropriate standard of review for restructuring plans.

II. DESCRIPTION OF COMPLIANCE FILING

The Filing purports to conform the Settlement to the requirements of the Act and to the Department's directives in D.P.U./D.T.E. 96-23. The Filing addresses the following issues: 10 percent rate reduction; unbundled transition charges; modification of the transition cost adjustment clause; unbundled streetlighting service; farm discount rate rider; low-income discounts; transmission cost adjustment clause; demand-side management ("DSM") and renewables charges; final fuel cost adjustment revenue balance; standard offer tariff; and default service tariff.

A. Ten Percent Rate Reduction

The Company states that the Filing maintains the 10 percent rate reduction for each rate class as approved in the Settlement, based on the undiscounted base and fuel charge rates in effect on August 1, 1997, and the Conservation Charge ("CC") rates which were proposed as part of the Settlement (Filing at 2-3, 103). According to the Company, the CC rates in effect during August 1997 had originally taken effect in 1996, and were scheduled to change in 1997 (id. at 103-104). Because of the impending restructuring filing intended by EECo, the Company was granted permission to continue using the 1996 CC charges until the disposition of the restructuring filing (id. at 103). The Company maintained that, although the 1996 CC charges were the ones billed during August 1997, using the CC charges submitted as part of the Settlement produces a more representative rate level for purposes of comparing the proposed rates with the August 1997 rates (id. at 104).

According to the Company, application of the increased DSM and renewables charges mandated by the Act to the streetlighting class average billing units would not produce the required 10 percent rate reduction (id. at 103). In order to ensure the 10 percent reduction, EECo redesigned its streetlighting rates using August 1997 as a starting point (id.). For each fixture code, the Company developed an annual charge based on August 1997 rate levels, then applied the 10 percent reduction to the annualized charge per fixture code, further

disaggregating the charge for standard offer, transmission, transition charge, distribution, DSM, and renewables (id.).

B. Unbundled Transition Charge

The Company states that in addition to unbundling the DSM charge and the renewables charge in its retail delivery tariffs, it has also unbundled the transition charge as required by the Act (Filing at 2-3).

C. Modification of the Transition Cost Adjustment Clause

The Company proposes to modify the terms of its proposed Transition Cost Adjustment ("TCA") clause, M.D.T.E. No. 339, to accommodate the method by which the transition charges were unbundled in Eastern's proposed retail delivery rates (Filing at 3). The Company states that in order to achieve as nearly uniform percent rate reductions within each rate class as is possible, it was necessary to establish transition charges that contained demand-based charges and/or time-of-use ("TOU")-based energy charges for those rate classes whose current tariffs incorporate some or all of those component charges (id.). Therefore, to preserve near-uniform rate reductions for all customers each time the transition charges are revised based on changes in Montaup's contract termination charges, EECo states that it is necessary to change the transition charges in each rate in proportion to the change in Montaup's contract termination charges (id.). The Company notes that, in contrast, the use of a uniform cents per kilowatthour ("KWH") TCA factor would lead to disparate rate reductions among customers (id. at 4).

D. Unbundled Streetlighting Service

The Company has proposed a redesign of its streetlight tariffs to reflect the unbundling requirements contained in G.L. c. 164, § 1D and the municipal streetlight purchase option contained in St.1997, c. 164, § 196 (G.L. c. 164, § 34) (id.). Rate S-1 has been unbundled to separate all unbundled energy charges from facilities ownership and maintenance costs (id.). The Company states that the rate redesign has been accomplished in a revenue-neutral fashion after adjusting for the DSM and renewables charges required by the Act and after providing

streetlight customers with a 10 percent reduction from electric charges effective during August 1997, as required by the Act (id.).

E. Farm Discount Rate Rider

The Company states that it has proposed a rate rider, Farm Discount Rate Rider FDR, M.D.T.E. No. 361, that provides an additional 10 percent total bill discount to customers who meet the eligibility criteria for agricultural customer discounts contained in St. 1997, c. 164, § 315 (id.). While not specified in the rider, the Company proposes that the discounts will be accounted for and reconciled at the time of the Residual Value Credit and prospective rate design changes will be implemented at that time if necessary (id.).

F. Low-Income Tariff

The Company has provided a discounted tariff for low-income customers, which EECo states meets the requirements of the Act (id. at 12-13).

G. Withdrawal of Transmission Cost Adjustment Clause

In the Order, the Department approved, subject to the Company's compliance with Department directives, the Company's retail delivery rate schedules and Transmission Cost Adjustment Clause ("TCAC") (Filing at 5). Under the approved retail delivery rate schedules and the TCAC, EECo would procure transmission service on behalf of its retail delivery service customers from Montaup and resell that service under EECo's retail rates to its retail delivery service customers in the same manner in which EECo had procured all-requirements service from Montaup and resold it to its own customers under retail rates (id.). However, the Company states that as a result of the Federal Energy Regulatory Commission ("FERC") decision on Montaup's open access transmission tariff in FERC Docket No. ER97-3200-000 (September 12, 1997), Montaup will now directly, or indirectly through EECo acting as Montaup's agent, bill retail choice customers for transmission service (id.). Consequently, EECo has proposed to amend its retail delivery tariffs by removing references to the transmission service charges, and to cancel its proposed TCAC, presently identified as M.D.P.U. No. 338.

H. DSM and Renewables Charges

The Company notes that in the Settlement, the charges for DSM and renewables under EECo's Conservation Cost Adjustment ("CCA") Clause, M.D.P.U. No. 302, and the charge for residential energy audits under EECo's Conservation Service Charge ("CSC") Clause, M.D.P.U. No. 182, were rolled into base rates (id.). The Company states that the charges for DSM and renewables funding required under the Act are different from the levels set in the Settlement (id.). Therefore, the Company proposes that the CCA and CSC charges be deducted from base rates and replaced with the factors specified in the Act (id.). In addition, the Company proposes a DSM and renewables energy charge clause to enable it to track and report to the Department and the Division of Energy Resources levels of revenues and expenses incurred and to implement the annual changes in recovery levels mandated by the Act (id.).

I. Final Fuel Cost Adjustment Recommendation

The Company states that it will comply with the Department's directives in D.T.E. 98-13[4] and present to the Department the final balance remaining in its fuel cost adjustment account (id. at 6).

J. Standard Offer Tariff

The Company states that it has revised its standard offer service tariff, M.D.T.E. No. 340, to conform to the availability requirements of the Act (id.). The tariff now states that a customer, other than a low-income customer, who moves into the Company's service territory after March 1, 1998, is not eligible to receive standard offer service (id.). Low-income customers are free to move in and out of standard offer service at any time during

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[4] By vote of the Commission dated January 22, 1998, the Department opened an investigation to consider granting electric distribution utilities exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½, as authorized by St. 1997, c. 164, §§239, 240. Insofar as the Settlement as initially filed did not address the issue of any final balances remaining in the Company's fuel cost adjustment account, the Department will not consider this matter in this proceeding, but will address it in D.T.E. 98-13.

the standard offer period (id.). Customers not eligible for standard offer service and not taking service from a competitive supplier will receive default service (id.).

K. Interim Default Service Tariff

The Company notes that, in the Settlement, it committed to provide "basic service" and "safety net service" to its customers on terms and conditions approved by the Department (id.). The Act changed the name of these services to "default service" and added new requirements (id.). The Company proposes to comply with the Department's directives and with the Act by employing the following process (id.). First, the Company proposes an interim default service rate, M.D.T.E. No. 362, for the period between March 1, 1998 and the date that EECo completes its Default Service Request for Proposals ("RFP"). During this period, the price for interim default service will be set equal to the undiscounted standard offer service price of $0.03200 per KWH (id.). Second, on or before May 1, 1998, the Company states that it will file, for the Department's review and approval, a final default service tariff that fully complies with the requirements of the Act and the Department's regulations (id.).

III. STANDARD OF REVIEW

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 25, §§ 5, 9, 18, 19, and 20; c. 111, §§ 5K and 142N; and c. 164, §§ 1 through 33, 69G through 69R, 71 through 75, and 76 et seq. This authority was most recently revised and augmented by the Act. The primary goal of the Act is to establish a new electric utility "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier" in order to "promote reduced electricity rates." St. 1997, c. 164, § 1.

Among other things, the Act authorizes and directs the Department to "require electric companies organized pursuant to the provisions of [G.L. c. 164] to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by this chapter. Such companies shall file plans that include, but shall not be limited to, the

provisions set forth in this section." St. 1997, c. 164, § 193 (G.L. c. 164, 1A(a)). Pursuant to this statutory authority, the Department will review a Company's restructuring plan for compliance with applicable provisions of the Act.

The Act sets forth explicit directions for the Department's review of restructuring plans. Plans must contain two key features. First, they must provide, by March 1, 1998, a rate reduction of 10 percent for customers choosing the standard service transition rate from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. Id. Second, each plan must be designed to implement a restructured electric generation market by March 1, 1998 by requiring the electric company to offer retail access to all customers as of that date. Id.

Plans must also include the following important provisions:

(1) an estimate and detailed accounting of total transition costs eligible for recovery pursuant to G.L. c. 164, § 1G(b);

(2) a description of the company's strategies to mitigate transition costs;

(3) unbundled prices or rates for generation, distribution, transmission, and other services;

(4) proposed charges for the recovery of transition costs;

(5) proposed programs to provide universal service for all customers;

(6) proposed programs and mandatory charges to promote energy conservation and demand-side management;

(7) procedures for ensuring direct retail access to all electric generation suppliers;

(8) discussions of the impact of the plan on the Company's employees and the communities served by the Company; and

(9) a mandatory charge per kilowatthour for all consumers to support the development and promotion of renewable energy projects;

Id. at § 37 (G.L. c. 25, § 20(a)(1)), § 193 (G.L. c. 164, 1A(a)).

The Act directs the Department to allow the implementation of plans filed before the enactment date: "An electric company that has filed a plan which substantially complies or is consistent with this chapter [i.e., G.L. c. 164, as amended] as determined by the [D]epartment shall not be required to file a new plan, and the [D]epartment shall allow such plans previously

approved or pending before the [D]epartment to be implemented." Id. at § 193 (G.L. c. 164, § 1A(a)). The Department is governed by the statutory directives in determining whether a plan should be approved for implementation. In doing so, the Department applies a two-part standard of review. First, for those sections of a plan governed by G.L. c. 164, the Department must determine whether the plan "substantially" complies or is consistent with the Act as it amends G.L. c. 164. For all other features of the plan, the Department must determine unqualified compliance of those features with applicable provisions of the Act.

We first state the standard of review in determining whether a plan substantially complies or is consistent with G.L. c. 164. The statute directs the Department to approve any plan that was filed before enactment, provided it substantially complies or is consistent with G.L. c. 164, as amended. Id. at § 193 (G.L. c. 164, § 1A(a)). Although the word "substantially" is not defined in the Act, its meaning may be determined from usage and context. G.L. c. 4, § 6, cl. Third. In applying this standard, the Department considers that an action "substantially complies" if it achieves "compliance with the essential requirements" of G.L. c. 164. Black's Law Dictionary, Sixth Edition (1991). An action that is compatible with and not contradictory of a statute is "consistent" with the statute. Id. The use of these terms in the disjunctive leads to the conclusion that the Legislature has given the Department a measure of discretion to effect the important public purposes of the Act. In addition, the Legislature has mandated swift implementation of the Act (i.e., before March 1, 1998). Because the phrase "substantially complies or is consistent with" is imprecise, the Department supplements its understanding of the words in the statute (customarily, "the principal source of insight into legislative purpose," Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984)), with a consideration of "the statute's purpose and history." Sterilite Corp. v. Continental Casualty Co., 397 Mass. 837, 839 (1986). A more limiting interpretation would defeat the Act's purposes and fail to give "a fair consideration of the conditions attending its passage." Fickett v. Boston Fireman's Relief Fund, 220 Mass. 319, 320 (1915).

Next, we address the standard of review for those sections of a restructuring plan that are not governed by G.L. c. 164. In such instances, the Department must require unqualified compliance with the Act's mandates. Thus, in reviewing sections of a restructuring plan not governed by G.L. c. 164, the Department must determine that those sections conform to the Act before it may approve a restructuring plan.

In this case, the Company has filed its restructuring plan in the form of a settlement. Therefore, the Department also applies our standard of review for settlements. In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Act, Department precedent, and the public interest. Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U 96-50, at 7 (Phase I) (1996); Massachusetts Electric Company, D.P.U. 96-59, at 7 (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

In assessing whether an electric company's proposed settlement of restructuring issues is consistent with applicable law and Department precedent, the Department will consider whether the settlement is consistent with the statutory requirements and the overall goal and principles for restructuring that were established in the Act and with the Department's two major restructuring orders, D.P.U. 95-30 and D.P.U. 96-100, to the extent the terms of those orders are not superseded by the Act. A plan, filed as a settlement, that strikes an appropriate balance among the various competing interests in electric restructuring and that achieves an orderly transition, all consistent with the Act, other applicable law, Department precedent, and the public interest, should be approved for implementation.

IV. ANALYSIS AND FINDINGS

As an initial matter, the Department notes that the Filing reflects a number of language changes that enhance the clarity of the Company's retail access tariffs. Additionally, the Department notes that the Filing makes provision for elements which had not been contemplated by the Settlement, including provisions for agricultural discounts and unbundled streetlighting service. As the Department's investigation into the terms and conditions of service for both distribution companies and competitive suppliers is ongoing in D.P.U./D.T.E. 97-65, the Department makes no findings at this time with respect to proposed tariffs M.D.T.E. No. 358, governing terms and conditions for distribution companies, and M.D.T.E. No. 359. governing terms and conditions for competitive suppliers. Accordingly, the Department's review herein is confined to the Company's remaining tariffs, M.D.T.E. Nos. 337 through 356, and 360 through 362.

With respect to the 10 percent rate reduction, the Department has compared the Filing with both D.P.U./D.T.E. 96-24 and St. 1997, c. 164, § 193 (G.L. c. 164, § 1B(b)). The CC charges contained in the Filing are not the ones actually billed during August 1997, but reflect the CC charges that were originally proposed in the Settlement. These charges were never placed into effect. Therefore, the Department finds that the CC charges offered as part of the Settlement are not representative of the Company's rates in effect at any time during 1997. The Department finds that the CC charges billed during August 1997, as well as the base rates and fuel charges billed during that period, represent an appropriate starting point in evaluating whether the Company has complied with the 10 percent rate reduction mandated by the Act.[5]

Based on our review, the Department finds that the rates contained in the Filing represent a rate reduction of at least 10 percent over those rates which the Department has found to be more reflective of August 1997 rates. While the Company's controlled water heater rate W-1, M.D.T.E. No. 335, has only been reduced by 8.2 to 8.3 percent over rates in effect during August 1997, the Department notes that this rate applies only to water heater service; electricity supplied for non-water heater purposes, such as lighting, must be metered

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[5] The Company's current streetlighting rate S-1 is not subject to CC charges.

and billed on another rate. Therefore, when the water heater bill is combined with the bill for other electricity services, the overall reduction will be at least 10 percent. Based on rate W-1's average monthly KWH consumption for residential, commercial, and industrial customers,[6] the Department finds that, when combined with other rate classes, the average rate to be paid by these customers as of March 1, 1998 will be 10 percent less than the average rate paid during August 1997, as permitted under St. 1997, c. 164, § 193 (G.L. c. 164, § 1A). Accordingly, the Department finds that, in this respect, the Filing substantially complies with the 10 percent rate reduction requirement of St. 1997, c. 164, § 193 (G.L. c. 164, § 1B(b)).

With respect to the unbundling of the transition charge, the Department has examined the Filing and finds that the proposed tariffs have separated the transition charge from other rate components. Accordingly, the Department finds that, in this respect, the Filing complies with St. 1997, c. 164, § 193 (G.L. c. 164, § 1D).

With respect to the proposed revisions to the Transition Cost Adjustment ("TCA") reflected in M.D.T.E. No. 339, the Department agrees that the use of a straight cents-per-KWH adjustment, as initially proposed in the Settlement and approved in the Order, could produce disparate bill impacts upon customers with demand- or TOU-based rates, including the possibility of negative rate components. Therefore, the Department finds it appropriate to make provision for demand- and TOU-based rate elements as part of the transition charge. However, the Department notes that the proposed TCA tariff fails to explain adequately the method by which Montaup's contract termination charges would be passed through to those customers served under either demand- or TOU-based rates. The fact that transition charges, including those levels embedded into demand or TOU rate elements, would be "adjusted proportionately" does not provide a sufficient basis to conclude that adjustments made under the TCA are reasonable. Boston Gas Company, D.P.U. 92-259, at 47 (1993).

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[6] The average W-1-related use per residential customer during 1996 was approximately 272 KWH per month; the corresponding use for commercial and industrial customers was approximately 256 KWH and approximately 83 KWH per month, respectively (1996 Annual Return to the Department at 304-304.1).

Accordingly, the Department finds that the Company's TCA tariff M.D.T.E. 339 does not comply with St. 1997, c. 164, § 193 (G.L. c. 164, § 1D).

The Company is hereby directed to resubmit its TCA tariff to specify that for those transition charges recovered through energy components, including those transition charges embedded in the energy components of the Company's TOU-based rates, the transition charge shall be adjusted for changes in Montaup's termination charge through the following adjustment process: (1) calculating the expected revenues from the application of the new termination charge during which the adjustment factor would apply; (2) calculating the actual revenue difference between the termination charges paid and the transition charge revenues received during the period beginning with the effective date of the initial termination charge and ending with the effective date of the new termination charge; and (3) dividing the sum of the foregoing revenues by the initial termination charge revenues calculated for the period during which the adjustment factor will be in effect. This formula produces an adjustment factor which, when multiplied by the transition charge, results in a revised transition charge.

For those transition charges embedded in demand components, as found in Rates G-2, G-3, G-4, G-5, G-6, A-6, and T-2, the transition charge component of the demand charge shall be adjusted for changes in Montaup's termination charge through the following adjustment process: (1) calculating the expected demand-related revenues from the application of the new termination charge during which the adjustment factor would apply; (2) calculating the actual revenue difference between the demand-related termination charges paid and the demand-related transition charge revenues received during the period beginning with the effective date of the initial termination charge and ending with the effective date of the new termination charge; and (3) dividing the sum of the foregoing revenues by the initial demand-related termination charge revenues calculated for the period during which the adjustment factor will be in effect. This formula produces an adjustment factor which, when multiplied by the transition charge component of the demand charge, results in a revised transition charge component.

Additionally, the Company's refiled TCA shall include a list of the embedded transition charge components included in the Company's retail delivery rates, such as those found on pages 111 through 113 of the Filing. This is intended to facilitate customer and Department understanding of the Company's tariffs.

With respect to the Company's proposed streetlighting service, EECo has unbundled its streetlighting tariff to separate distribution charges and transition charges, and has incorporated both standard offer service and DSM/renewables charges as a part of the luminaire charges. The Act requires electric companies to separate generation, transmission, distribution, and other charges on customer bills. St. 1997, c. 164, § 193 (G.L. c. 164, § 1D). The Act does not require electric companies to separate streetlight ownership and maintenance costs. Until municipalities negotiate to purchase streetlights, the ownership and maintenance costs should be included with distribution costs. Therefore, the Company is directed to redesign its streetlight tariff to separate the standard offer charges, transmission charges, transition charges, DSM charges, and renewables charges.[7] Additionally, the Company is directed to bundle its distribution charges into the luminaire price component. Furthermore, in order to avoid necessitating refiling its streetlighting tariff annually because of the changes in DSM and renewables charges authorized under the Act, EECo is directed to remove the DSM charges and renewables charges from its streetlighting rate, and add references to both the DSM tariff and renewables tariff to the Rate Adjustments component of the streetlighting tariff.

With respect to the Company's proposed farm discount rate rider, the Department has examined proposed M.D.T.E. No. 361 and finds that the tariff accurately reflects the conditions under which the additional agricultural discount required by the Act and new Department regulations[8] would be applied. Accordingly, the Department finds that, in this

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[7] The rate reductions required by the Act should be reflected in the streetlight tariffs. Municipalities that, pursuant to Section 196 of the Act, choose to purchase streetlights and then convert to an alternative tariff may fall outside the rate reductions requirements of the Act.

[8] Electric Restructuring Rules, D.P.U./D.T.E. 96-100 (February 20, 1998).

respect, the Company's farm discount rate rider tariff M.D.T.E. No. 361 complies with St. 1997, c. 164, § 315 and 220 C.M.R. § 11.00 et seq. With respect to the Company's proposal that the discounts be accounted for, and reconciled at the time of the residual value credit is determined, we note that this issue is addressed by the Department's rules governing restructuring of the electric industry, and is not approved in this Order.[9]

With respect to the proposed low-income residential tariff, M.D.T.E. No. 343, the Department finds that the availability clause is inconsistent with the eligibility criteria required by St. 1997, c. 164, § 193 (G.L. c. 164, § 1F(4)(i)). Accordingly, the Department finds that the Company's low-income residential tariff M.D.T.E. No. 343 does not comply with the Act. The Act provides specific language regarding eligibility for the low-income tariff, and EECo is directed to include language from the Act in the availability clause of the tariffs.[10] Additionally, the Company is directed to include in its low-income residential tariff the provision that EECo will guarantee the customer's payment to its designated supplier up to the prices that the Company charges to customers for standard offer service.

With respect to the proposed withdrawal of the TCAC tariff, M.D.P.U. No. 338, the Department notes that as a result of FERC Docket No. ER97-3200-000, Montaup is now responsible for providing retail transmission service to EECo's customers who choose competitive generation service. The Department acknowledges that such retail transmission

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9 Each distribution company shall allocate to other rate classes, as part of a general rate case, the revenue deficiency resulting from the farm discount using an allocation method approved by the Department. 220 C.M.R. § 11.04(6)(a). The Department recognizes that distribution companies may experience under-recoveries associated with implementation of the farm discount. Distribution companies may defer costs associated with the implementation of the farm discount for consideration in a subsequent general rate case. D.P.U./D.T.E. 96-100, at 23.

10 Each distribution company shall allocate to other rate classes, as part of a general rate case, any revenue deficiency resulting from the low-income customer tariff using an allocation method approved by the Department. 220 C.M.R. 11.04(5)(d). The Department recognizes that the number of customers that receive distribution service under the low-income customer tariff may increase over current levels due to the eligibility criteria established in the final regulations. Distribution companies may defer costs associated with any increased number of low-income customers for consideration in a subsequent general rate case. D.P.U./D.T.E. 96-100, at 14.

service is under the jurisdiction of FERC. Accordingly, the Department hereby approves the Company's proposal to withdraw M.D.P.U. No. 338.

With respect to the Company's proposed DSM and renewables tariff, the Department has examined proposed M.D.T.E. No. 360, and finds that the charges contained in the tariff are in compliance with the Act. However, the Department notes that the DSM-related provisions of the Act, as found in G.L. c. 25, § 19, pertain to utility-sponsored programs. In contrast, funding for the renewable energy projects authorized by G.L. c. 25, § 20 is administered by the Massachusetts Technology Park Corporation ("MTPC"). In order to ensure that these funds are properly tracked, the Department finds it appropriate to require that DSM and renewables be separately tariffed.[11] See St. 1997, c. 164, § 37 (G.L. c. 25, § 20(c)). Additionally, separate tariffs of DSM and renewables would further the intent of the Act that DSM and renewables charges are to be separately identified on customers' bills. See St. 1997, c. 164, § 37 (G.L. c. 25, § 20(a)(1)). Accordingly, the Department finds that the Company's DSM and renewables tariff M.D.T.E. No. 360 does not comply with St. 1997, c. 164, § 37 (G.L. c. 25, § 19). The Company is hereby directed to file separate DSM and renewables tariffs. With respect to renewables spending and implementation, the Company is directed to remit the revenues generated by the renewables charge to the MTPC as specified in the Act. G.L. c. 25, § 20.

With respect to the Company's standard offer service tariff, the Department has examined EECo's proposed tariff M.D.T.E. No. 340, and finds that EECo has complied with the requirements of the Act which provide that low-income customers are free to move at any time between competitive service and standard offer service. Accordingly, the Department finds that, in this respect, the Company's standard offer service tariff M.D.T.E. No. 340 complies with St. 1997, c. 164, § 193 (G.L. c. 164, § 1B(4)(iii)).

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[11] Consistent with these findings, the Company is hereby directed to modify the "Rate Adjustments" clause of its retail delivery tariffs to specify separate adjustment components for the DSM charge and renewables charge.

With respect to interim default service, the Department notes that the Company's default service solicitation process is still in process, and that final bid awards are anticipated in time for default service deliveries to commence by June 1, 1998. In light of the need for default service to be available on March 1, 1998, the Department finds that the Company's proposed interim default service, including the call option features, fulfills the requirements of the Act. However, in order to avoid customer confusion about the applicability of standard offer service versus default service, the Company is hereby directed to modify the availability clause of its interim default service tariff such that default service is available to any customer who for any reason has stopped receiving generation service from a competitive supplier, and is not otherwise eligible for standard offer service. Accordingly, the Department finds that the Company's interim default service tariff M.D.T.E. No. 362 does not comply with St. 1997, c. 164, § 193 (G.L. c. 164, § 1B(d)). The Company is hereby directed to refile its interim default service tariff in accordance with the directives contained in this Order.

V. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the rates and charges set forth in M.D.T.E. Nos. 337, 339 through 356, and 360 through 362 as revised, filed with the Department on February 9, 1998, which would apply to electric service consumed on or after March 1, 1998, be and hereby are DISALLOWED; and it is

FURTHER ORDERED: That Eastern Edison Company shall file tariffs for retail delivery service, to be numbered M.D.T.E Nos. 363 et seq., which shall be consistent with the directives of this Order and shall apply to electric service consumed on or after March 1, 1998; and it is

FURTHER ORDERED: That Eastern Edison Company shall comply with all orders and directives contained herein.

By Order of the Department,

_____
Janet Gail Besser, Chair

_____
John D. Patrone, Commissioner

_____
James Connelly, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).